

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WAYMO LLC,

No. C 17-00939 WHA

Plaintiff,

v.

UBER TECHNOLOGIES, INC.;
OTTOMOTTO LLC; and OTTO
TRUCKING LLC,

**NOTICE AND ORDER RE
SEALING OF LETTERS FROM
OFFICE OF THE UNITED
STATES ATTORNEY AND
RICHARD JACOBS**

Defendants.

On November 22, the Court received a letter from the Office of the United States Attorney with information bearing directly on the merits of this civil action and a request that the letter be subject to the protective order herein (Dkt. No. 2260-1). That letter has been kept provisionally under seal until now. Yesterday, the Court received a second letter from that office, appended hereto as Exhibit A, with a request that both letters remain hidden from public view (but provided to the parties). In support of this request, however, the second letter cites only general policies with little applicability to our highly unusual situation, especially since the office itself volunteered the information in the first letter. The request is therefore **DENIED**.

Relatedly, plaintiff Waymo LLC filed an administrative motion to file under seal a heavily-redacted letter dated May 5, 2017, from Richard Jacobs's attorney, among other things, pursuant to *defendants'* confidentiality designations (Dkt. No. 2281-5). Waymo itself does not seek to redact any of the materials encompassed by this administrative motion. Jacobs also filed separate administrative motions specifically to designate the Jacobs letter as confidential and keep it from public view (Dkt. Nos. 2298–99). The Jacobs letter contains information that

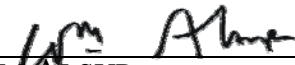
bears directly on the merits of this action. This order finds no compelling reasons that would outweigh the public's right to access and justify the extensive redactions sought by defendants and Jacobs. Nor does Federal Rule of Evidence 408 support Jacobs's motion, since that rule governs the *admissibility* of negotiations evidence, not the sealing of public records. Jacobs's administrative motions are therefore **DENIED** and Waymo's administrative motion is **DENIED IN PART** only with respect to the Jacobs letter, except that the redactions marked in green highlighting in Exhibit B will be preserved. In the Court's view, those redactions adequately balance the concerns articulated by defendants and Jacobs with the public's right to access. This is without prejudice to any motion by other entities, foreign or domestic, to unseal further portions of the Jacobs letter. The Court **DEFERS** ruling on the remainder of Waymo's administrative motion, which concerns matters separate from the Jacobs letter, pending the submission of supporting declarations, if any, from defendants to justify their designations.

Jacobs also filed an administrative motion to file entirely under seal a letter objection to his Court-ordered testimony, citing the presence of "personal identifying, confidential, and sensitive information" and requesting "similar confidential treatment" on par with the November 22 letter from the Office of the United States Attorney (*see* Dkt. No. 2283-1). As stated, however, the latter will be unsealed. The generic reference to "personal identifying, confidential, and sensitive information," untethered to any particularized facts or specific passages, fails to justify the wholesale sealing requested by Jacobs. This order finds that no portion of Jacobs's objection warrants sealing. This administrative motion is also **DENIED**.

The two letters from the Office of the United States Attorney, the Jacobs letter (save and except for the redactions marked in green highlighting in Exhibit B), and Jacobs's objection shall be unsealed and re-filed on the public docket pursuant to this order unless emergency relief is obtained from the court of appeals by **DECEMBER 13 AT NOON**. The Clerk shall transmit a copy of this order and its exhibits to the Office of the United States Attorney **TODAY**.

IT IS SO ORDERED.

Dated: November 29, 2017.


 WILLIAM ALSUP
 UNITED STATES DISTRICT JUDGE